

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

FRED A. DIXON, JR., #01465237,

Plaintiff,

v.

SKYVIEW GUARDS,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 6:22-cv-471-JDK-JDL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Fred A. Dixon, Jr., a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.

On March 27, 2023, Judge Mitchell issued a Report recommending that the Court dismiss this case with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g), but without prejudice as to the refiling of his lawsuit upon satisfaction of three conditions: (1) payment of the \$100.00 sanction imposed by the Northern District of Texas; (2) receiving written permission to file a new lawsuit; and (3) payment of the full \$402.00 filing fee or evidence that Plaintiff is in imminent danger of serious physical injury. Docket No. 3. A copy of the Report was mailed to Plaintiff. In response, Plaintiff filed an amended complaint that fails to identify an error in the Report and similarly fails to demonstrate that Plaintiff is in imminent

danger of serious physical harm that would invoke the exception to section 1915(g). *See Newman v. Harris*, 770 F. App'x 216 (5th Cir. 2019) (emphasis supplied). The Court will not, therefore, construe the amended complaint as objections to the Report.<sup>1</sup>

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").


Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the

---

<sup>1</sup> Even construing the amended complaint as objections, the Court would overrule them because (1) Plaintiff failed to identify any error in the Report; (2) Plaintiff failed to show that he is imminent danger of serious physical harm; and (3) Plaintiff has not satisfied the sanction imposed on him by the Northern District of Texas.

United States Magistrate Judge (Docket No. 3) as the findings of this Court and **DISMISSES** Plaintiff's claims with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g) but without prejudice as to the refiling of his lawsuit after satisfying the three conditions stated above and in the Magistrate Judge's Report.

So **ORDERED** and **SIGNED** this **2nd** day of **October, 2024**.

  
\_\_\_\_\_  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE